COURT, U. S.
FILED
JAN 23 1974
MICHAEL RODAK, JR., CLERK

APPENDIX

In The Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-466

WILLIAM E. ARNOLD COMPANY,
a Florida corporation,

Petitioner,

v.

CARPENTERS DISTRICT COUNCIL OF JACKSONVILLE AND VICINITY, A LABOR ORGANIZATION, AND AS AN UNINCORPORATED ASSOCIATION, BY AND THROUGH JOHN H. SEA, BUSINESS REPRESENTATIVE THEREOF; AND CARPENTERS LOCAL UNION NO. 627, A LABOR ORGANIZATION, AND AS AN UNINCORPORATED ASSOCIATION, BY AND THROUGH EARL S. HUFF, ASSISTANT BUSINESS REPRESENTATIVE THEREOF,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

APPENDIX

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INDEX OF RELEVANT DOCKET ENTRIES

VOLUME ONE:

I. Petition for Writ of Certiorari filed June 5, 1971.

II. Jurisdictional Brief filed by attorneys for petitioners filed June 5, 1971.

III. Petitioners' Main Brief filed August 20, 1971.

IV. William E. Arnold Company's Main Brief in Opposition, etc. filed September 7, 1971.

V. Order of Supreme Court of Florida allowing certiorari entered July 29, 1971.

VI. REVISED TRANSCRIPT OF RECORD filed in the Supreme Court of Florida September 10, 1971. (The opinion of the Florida District Court of Appeal is reprinted in the Appendix to the Petition for Writ of Certiorari at p. 3a.)

VII. Order of Supreme Court of Florida granting respondent's motion to supplement the record with attached record entered October 17, 1972.

VIII. Order of Supreme Court of Florida granting respondent's motion to supplement the record with attached record entered November 29, 1972.

VOLUME TWO:

IX. Opinion of the Supreme Court of Florida filed April 18, 1973. (Reprinted in the Appendix to the Petition for Writ of Certiorari at p. 8a.)

X. Petition for Rehearing filed by attorneys for William E. Arnold Company filed on May 2, 1973.

XI. Petitioner's Reply to Respondent's Petition for Rehearing filed May 21, 1973.

XII. Motion of Northeastern Florida Chapter, The Associated General Contractors of America, Inc. for Leave to Participate as Amicus Curiae with brief attached filed May 3, 1973.

XIII. Petition for Rehearing and Motion to File Brief as Amicus Curiae Florida West Coast Chapter, Associated General Contractors of America, Inc., et al. filed May 3, 1973.

XIV. Brief on Rehearing of Amici Curiae The Miami Herald, a Division of Knight Newspapers, Inc. and Florida Publishing Company filed May 7, 1973.

XV. Joint Amicus Curiae Brief in Support of Petition for Rehearing filed by The Tribune Company and the Florida East Coast Chapter of the Associated General Contractors of America, Inc. filed May 7, 1973.

XVI. Brief Amicus Curiae on behalf of the South Florida Chapter of the Associated General Contractors of America, Inc., Associated Sheet Metal Contractors and The South Florida Poured Roof Deck Association filed May 14, 1973.

XVII. Florida State Chamber of Commerce Amicus Curiae Brief in Support of Petition for Rehearing filed May 30, 1973.

XVIII. Brief in Florida Sugar Cane League, Inc. in Support of Petition for Rehearing filed June 13, 1973.

XIX. Order of the Supreme Court of Florida denying petition for rehearing entered July 20, 1973. (Reprinted in the Appendix to the Petition for Writ of Certiorari at p. 15a.)

IN THE SUPREME COURT
OF THE STATE OF FLORIDA

CARPENTERS DISTRICT COUNCIL OF JACKSONVILLE AND VICINITY, a labor organization, and as an unincorporated association, by and through JOHN H. SEA, business representative thereof; and CARPENTERS LOCAL UNION NO. 627, a labor organization, and as an unincorporated association, by and through EARL S. HUFF, assistant business representative thereof,

Petitioners,

vs.

THE HONORABLE ROGER J. WAYBRIGHT, as Circuit Judge of the Fourth Judicial Circuit, in and for Duval County, Florida,

Respondent.

PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF THE STATE OF FLORIDA:

The Petitioners, Carpenters District Council of Jacksonville and Vicinity, and the Carpenters Local Union No. 627, petition this Honorable Court for a Writ of Certiorari to the District Court of Appeal of Florida, First District, to review that certain order entered by the lower Court, dated the 10th day of May, 1971, denying petitioners' Suggestion for a Writ of Prohibition, and in support thereof would show unto this Court the following:

1. Your petitioners submit that the order complained of

herein is in direct conflict with the decisions of this Honorable Court rendered in the cases of *Scherer and Sons, Inc. v. International Ladies' Garment Workers Union*, 142 So.2d 290 (Fla 1962) and *Sheetmetal Workers' International Association v. Florida Heat and Power, Inc.*, 230 So 2d 154 (Fla. 1970).

2. Copies of the Order below of record are filed simultaneous herewith.

3. The following are the facts of this case:

The proceedings in this cause were initiated when the William E. Arnold Company filed a Complaint for Injunction against the petitioners herein, a hearing was held before the Honorable Roger J. Waybright, and a temporary restraining order was issued, all on April 23, 1971. The Complaint alleged a work stoppage by the petitioners due to a jurisdictional dispute between labor organizations, and further alleged this was a violation of the collective bargaining agreement under which the petitioners were bound.

The petitioners then filed a Suggestion for a Writ of Prohibition in the District Court of Appeal, First District, suggesting that the lower Court was without jurisdiction in said case. The District Court held that although the conduct alleged in the Complaint was an unfair labor practice under Title 29, Labor, § 158 (b)(4)(i)(D), the State Courts had jurisdiction over the cause because of the violation of the bargaining agreement.

4. The order of the District Court, dated May 10, 1971, is in direct conflict with the Court's holding in the *Scherer* case that a state may not assert its injunctive processes against "an unfair labor practice" defined by federal statutes, due to exclusive federal jurisdiction.

5. The order of the District Court, dated May 10, 1971, is in direct conflict with this Court's holding in the *Sheetmetal Workers'* case that state jurisdiction, and the use of ex parte injunctions, should be limited to the three distinct areas where their use has already been established: *Where it is absolutely clear no federally protected or prohibited activities are involved,* where there is violence, and where there is an affront to the State's right to work policy.

6. The Order of the District Court, dated May 10, 1971, is in direct conflict with the *Scherer* and *Sheetmetal Workers* cases in that it holds that the State Court may make the initial determination of jurisdiction.

7. The Order of the District Court, dated May 10, 1971, is in conflict with the sense of the two above cases, in that it amounts to a ruling that if an unfair labor practice as defined by federal law is also a violation of a collective bargaining agreement, the State Court has jurisdiction to enjoin the conduct.

WHEREFORE, your petitioners pray that this Honorable Court issue its Writ of Certiorari to the District Court of Appeal, First District, to review the abovesaid Order.

Respectfully submitted:

MAHON & MAHON

BY /s/ Lacy Mahon, Jr.
LACY MAHON, JR.
77 Washington Street
Jacksonville, Florida 32202
Attorneys for Petitioners

I hereby certify that copy hereof has been furnished to the Hon. Roger J. Waybright, Circuit Judge, Respondent, Duval County Courthouse, Jacksonville, Florida, and to Messrs. Coffman and Jones, 1623 Barnett Bank Building, Jacksonville, Florida, attorneys for William E. Arnold Company, by U.S. Mail, this 4th day of June, 1971.

/s/ LACY MAHON, JR.
Attorney

IN THE SUPREME COURT OF FLORIDA
JULY TERM, A. D. 1971

THURSDAY, JULY 29, 1971

Case No. 41,199

CARPENTERS DISTRICT COUNCIL OF JACKSONVILLE AND VICINITY, ETC., ET AL.,

Petitioners,

vs.

THE HONORABLE ROGER J. WAYBRIGHT, as Circuit Judge, etc.,

Respondent.

ORDER ALLOWING CERTIORARI

The Petition herein for a Writ of Certiorari to the District Court of Appeal, First District of Florida, is granted and the cause is hereby set down for oral argument at 9:30 o'clock a.m., Friday, January 14, 1972. A maximum of 20 minutes to the side is allowed but counsel is expected to use only so much of that time as is necessary.

The Court has tentatively accepted jurisdiction of this case; however, the parties should be prepared to argue the jurisdictional issue should the question be raised by the Court.

The time for filing briefs on the merits is set forth in Rule 4.5c(6), F.A.R.

A True Copy

TEST:

/s/ Sid J. White
Clerk Supreme Court

IN THE DISTRICT COURT OF APPEAL OF FLORIDA

FIRST DISTRICT

CARPENTERS DISTRICT COUNCIL OF JACKSONVILLE AND VICINITY, a labor organization, and as an unincorporated association, by and through JOHN H. SEA, business representative thereof; and CARPENTERS LOCAL UNION NO. 627, a labor organization, and as an unincorporated association, by and through EARL S. HUFF, assistant business representative thereof,

Relators,

vs.

THE HONORABLE ROGER J. WAYBRIGHT, as Circuit Judge of the Fourth Judicial Circuit, in and for Duval County, Florida,

Respondent.

SUGGESTION FOR WRIT OF PROHIBITION

Relators, Carpenters District Council of Jacksonville and Vicinity, a labor organization, and as an unincorporated association, by and through John H. Sea, business representative thereof; and Carpenters Local Union No. 627, a labor organization, and as an unincorporated association, by and through Earl S. Huff, assistant business representative thereof, file this Suggestion for Writ of Prohibition, and allege:

1. Carpenters Local Union No. 627 and the Carpenters District Council of Jacksonville and Vicinity, are unincorporated associations of persons who are associated together for the purpose of collective bargaining with reference to wages,

hours and working conditions; and as such constitute labor organizations within the intent and purview of the laws of the State of Florida.

2. The William E. Arnold Company, is a corporation organized within the laws of the State of Florida, to do business as a general contractor. The William E. Arnold Company entered into an agreement heretofore filed in this cause, with the Carpenter's Local Union No. 627, on May 1, 1968, and said agreement is still in full force and effect.

3. Article VI of said agreement pertains to work stoppages, slowdowns and strikes, in relation to Jurisdictional Disputes between Unions, stating that there shall be no strikes because of a Jurisdictional Dispute.

4. On or about April 23, 1971, William E. Arnold Company filed a Complaint for Injunction against the Relators herein in the Circuit Court, Fourth Judicial Circuit, in and for Duval County, Florida, a copy of said Complaint is found in the certified copy of the Court record. Said Complaint alleging among other things:

> "10. Approximately one week ago, and again on April 21, 1971, Defendant Local 627's Assistant Business Representative, Earl S. Huff, asked Plaintiff's president, William E. Arnold, Jr., to change the assignment of the metal studs and furring work from the Wood Wire and Metal Lathers International Union, AFL-CIO, Local 59 to the Defendant Unions' employees, and further stated that he (Huff) would pull the defendant Unions' employees working for William E. Arnold Company off the job if the assignments weren't changed.
>
> 11. On April 22, 1971, Earl S. Huff, acting on behalf of the Defendant Unions instructed the carpenter em-

ployees of the Plaintiff to leave the job site, in clear violation of Article VI of Exhibit A attached hereto.

12. Since April 22, 1971, none of Plaintiff's carpenter employees have worked for plaintiff, nor are they presently working, because of the jurisdictional dispute between the Defendant Unions and Harvey Barnwell Co. and the Wood Wire and Metal Lathers International Union, AFL-CIO, Local No. 59, in clear violation of the no-strike promise contained in Article VI of Exhibit A."

That all of said allegations in essence specifically charge the Relators herein with engaging in a jurisdictional dispute. In fact, a reading of the Collective Bargaining Agreement clearly shows that the only "no strike provision" in the Collective Bargaining Agreement is contained in the paragraph dealing with jurisdictional disputes.

5. A hearing of the William E. Arnold Company's Application for temporary Restraining Order was held upon telephone notice to Relators, and while Relators were able to examine the Plaintiff's below witnesses, Relator was unable to present testimony upon such short notice. At the conclusion of the hearing a temporary Restraining Order was granted and issued by the Honorable Roger J. Waybright, Judge of said Court.

6. A certified copy of the Complaint for Injunction, including the aforesaid bargaining agreement, Injunction Bond, and Temporary Restraining Order issued by Judge Roger J. Waybright, are hereto attached and made a part hereof.

7. The conduct complained of by the William E. Arnold Company is exclusively within the jurisdiction of the National Labor Relations Board, pursuant to Title 29, Labor, Section 158 (b)(4)(i)(D) United States Code Annotated, and a

Florida Circuit Court is without jurisdiction to enjoin the Unions above, and said issue was argued before the Honorable Roger J. Waybright.

8. The abovesaid Unions are not subject to the jurisdiction of the Circuit Court, but the Circuit Court will, if not prohibited by the Writ of this Honorable Court, continue to assume jurisdiction and issue whatever Orders or future process it may deem proper.

9. The Carpenters District Council of Jacksonville and Vicinity and the Carpenters Local Union No. 627 have no plain, speedy or adequate remedy in the premises save that the issue of the Writ of Prohibition by this Honorable Court.

WHEREFORE, the Relators respectfully pray that this Honorable Court issue an alternative Writ of Prohibition directed to the Respondent, requiring him to show cause why the said Writ should not issue and be made permanent.

Respectfully submitted,

MAHON & MAHON

BY /s/ LACY MAHON, JR.
LACY MAHON, JR.
77 Washington Street
Jacksonville, Florida 32202
Attorneys for Relators

A - 12

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA

COMPLAINT

Case No. 71-3623 - Division B

(Filed April 23, 1971)

WILLIAM E. ARNOLD COMPANY, a Florida corporation,

Plaintiff,

v.

CARPENTERS DISTRICT COUNCIL OF JACKSONVILLE AND VICINITY, a labor organization, and as an unincorporated association, by and through JOHN H. SEA, business representative thereof; and CARPENTERS LOCAL UNION NO. 627, a labor organization, and as an unincorporated association, by and through EARL S. HUFF, assistant business representative thereof,

Defendants.

COMPLAINT FOR INJUNCTION

The Plaintiff, William E. Arnold Company, by its undersigned attorneys, brings this its Complaint for Injunction against the Defendants, Carpenters District Council of Jacksonville and Vicinity, a labor organization, and as an unincorporated association, by and through John H. Sea, business representative thereof; and Carpenters Local Union No. 627, a labor organization, and as an unincorporated association, by and through Earl S. Huff, assistant business representative thereof, and alleges:

1. The Plaintiff, William E. Arnold Company, is a corporation organized, chartered and existing under the laws of the State of Florida, and which is duly qualified and authorized to do business within the State of Florida, and to sue and be sued in the Courts of the State of Florida. At all times mentioned in this Complaint, the Plaintiff has maintained and operated within the City of Jacksonville, County of Duval, State of Florida, at 751 Riverside Avenue, in said City, a place of business which is, more particularly, an office used by the Plaintiff in its business as a general contractor.

2. The Defendant Unions are unincorporated associations of persons who are associated together for the purpose of collective bargaining with reference to wages, hours and working conditions. The members of said Unions therefore constitute a single class of persons within the meaning of the Florida Rules of Civil Procedure, Rule 1.220. The membership of said Unions is so numerous as to make it impractical to serve each and every member.

3. Defendant Unions are labor organizations within the intent and purview of the laws of the State of Florida, and within the meaning of 447.11, Florida Statutes. Said Defendant Unions maintain a business office at 920 Main Street, Jacksonville, Florida, have representatives, including John H. Sea and Earl S. Huff, and have members located in Jacksonville, Florida, and at all times mentioned in this Complaint, were and continue to be doing business within the State of Florida and within Duval County. Defendants, John H. Sea and Earl S. Huff are persons, among others, in charge of the business of the Unions in Duval County.

4. The matters described and alleged in this Complaint all occurred in Jacksonville, Duval County, Florida.

5. On May 1, 1968, Defendants entered into a collective bargaining Agreement with the Plaintiff and other employers who are members of the Northeastern Florida Chapter of the Associated General Contractors of America, which Agreement is attached hereto and made a part hereof as marked Exhibit A. Plaintiff was and is a member of the Northeastern Chapter of the Associated General Contractors of America, is a signatory to said Agreement, and is bound by the terms and conditions of Exhibit A. Said Agreement is still in full force and effect and does not terminate until April 30, 1971.

6. Article VI of said collective bargaining Agreement is essentially a no-strike promise on the part of Defendants that neither they nor their members will cause or participate in any strikes, slowdowns, or cessations of work whatever because of a jurisdictional dispute, and said Article VI reads as follows:

> "There shall be no work stoppage, slowdown, work cessation or strike because of a Jurisdictional Dispute. A mutually agreeable settlement, or joint decision of the International Unions involved, or decision or interpretation of the National Joint Board for the Settlement of Jurisdictional Disputes (or Hearing Panel) shall be binding and all parties agree to accept such decision or interpretation.
>
> All parties agree that they are bound by the 'Procedural Rules and Regulations of the National Joint Board for Settlement of Jurisdictional Disputes' and by the terms and provisions of the Agreement effective May 1, 1948, as amended, creating the Joint Board, and in particular the provision of the Agreement which states: 'Any decision or interpretation by the Joint Board (or Hearing Panel) shall immediately be accepted and com-

plied with by all parties signatory to this Agreement' and also in particular the provision which states: 'When the Contractor has made a specific work assignment in accordance with the procedures herein established by the Joint Board."

7. Plaintiff is presently employed as general contractor for construction of the Jacksonville General Hospital located at 4901 Richard Street, Jacksonville, Florida, at a total contract price of 2.3 million dollars.

8. Plaintiff has sub-contracted to Harvey Barnwell Co., the installation and construction of all metal studding, drywall, plaster and stucco in the Jacksonville General Hospital.

9. Harvey Barnwell Co. has a collective bargaining Agreement with Wood Wire and Metal Lathers International Union, AFL-CIO, Local No. 59, and in accordance with that contract has assigned its employees, who are members of such union, the work of installation of the metal studs and metal furring.

10. Approximately one week ago, and again on April 21, 1971, Defendant Local 627's Assistant Business Representative, Earl S. Huff, asked Plaintiff's president, William E. Arnold, Jr., to change the assignment of the metal studs and furring work from the Wood Wire and Metal Lathers International Union, AFL-CIO, Local No. 59, to the Defendant Unions' employees, and further stated that he (Huff) would pull the Defendant Unions' employees working for William E. Arnold Company off the job if the assignments weren't changed.

11. On April 22, 1971, Earl S. Huff, acting on behalf of the Defendant Unions instructed the carpenter employees of the Plaintiff to leave the job site, in clear violation of Article VI of Exhibit A, attached hereto.

12. Since April 22, 1971, none of Plaintiff's carpenter employees have worked for Plaintiff, nor are they presently working, because of the jurisdictional dispute between the Defendant Unions and Harvey Barnwell Co. and the Wood Wire and Metal Lathers International Union, AFL-CIO, Local No. 59, in clear violation of the no-strike promise contained in Article VI of Exhibit A.

13. It is essential to the successful completion of Plaintiff's work that its carpenter employees perform work for Plaintiff in accordance with their promise to do so in Exhibit A, and that Defendant Unions and their members abide by the no-strike promise contained in Article VI of Exhibit A.

14. By reason of the wrongful and continuing breach of Exhibit A by the Defendant Unions and their members, the Plaintiff will be irreparably damaged unless the Defendant Unions, their members, officers, agents and representatives, and Defendants' representatives John H. Sea and Earl S. Huff are immediately restrained by an Order of this Court from continuing their wrongful breach of Exhibit A.

15. The damage and injury which Plaintiff has suffered and will continue to suffer absent the relief sought herein, is of such a nature that it will be difficult or impossible to ascertain the amount of damage and injury, and the Defendant Unions may not be financially able to respond in an action at law for such damages. Therefore, Plaintiff has no adequate remedy at law.

16. Far greater injury will be inflicted upon Plaintiff and its employees by denial of the relief sought herein than will result to the Defendants by the granting of said relief. This Court has jurisdiction of the subject matter and of the parties and is the only forum that can grant relief to the Plaintiff. Plaintiff has no plain, speedy or adequate remedy at law.

Unless the illegal conduct of Defendants is immediately restrained and enjoined by this Court, Plaintiff may suffer irreparable injury.

WHEREFORE, Plaintiff prays:

1. A Temporary Restraining Order be immediately issued providing that until further Order of this Court, Defendants, and each of them and their officers, agents, members, servants, employees, attorneys, and representatives, and those persons in active concert or participation with them, and all persons having knowledge of the Court's Order, be immediately restrained and enjoined from:

(a) Causing, inducing, participating in or aiding any refusal to work for Plaintiff in violation of Article VI of the Agreement (Exhibit A).

(b) Committing, doing, or uttering any act, word or deed, written, spoken or performed, singularly or in concert, which is intended, designed or calculated, to induce, persuade, order, cause or bring about any breach of the aforesaid collective bargaining Agreement between Defendant Unions and Plaintiff, or which is intended, designed or calculated to induce, persuade, order, cause or bring about any work stoppage by or on the part of any person in violation of the aforesaid Agreement (Exhibit A).

(c) Taking any other action whatsoever for the purpose of causing any such breach of contract or work stoppages in violation of said Agreement (Exhibit A).

COFFMAN & JONES
1623 Barnett Bank Building
Jacksonville, Florida 32202

By /s/ J. P. Jones
Attorneys for Plaintiff

STATE OF FLORIDA)
) ss.
COUNTY OF DUVAL)

The affiant, William E. Arnold, Jr., being first duly sworn, deposes and says:

My name is William E. Arnold, Jr., and I am the president of William E. Arnold Company, and I have authority, on behalf of said Company, to make this affidavit and to institute this action. I have read the foregoing Complaint for Injunction, and the allegations contained therein are true, of my own knowledge, and on information and belief.

Dated this 23rd day of April, 1971.

/s/ William E. Arnold, Jr.

Sworn to and subscribed before me by
William E. Arnold, Jr., at Duval County,
Florida, this 23rd day of April, 1971.

/s/ Gloria W. Travassos
Notary Public, State of Florida at Large.

My Commission Expires September 14, 1973.

EXHIBIT A

Case No. 71-3623

(Filed April 23, 1971)

CARPENTERS

AGREEMENT

(Effective May 1, 1968 to April 30, 1971)

THIS AGREEMENT made and entered into by and between the undersigned individuals firms and corporations engages in the General Contracting business (hereinafter) called "Contractors") and the Carpenters District Council of Jacksonville and Vicinity, and all of the local Unions which comprise the Carpenter's District Council of Jacksonville, Florida (hereinafter called the "Union")

WHERE, the continuous and uninterrupted operation of the Contractors business and orderly collective bargaining relations between the Contractors and the Union are the essential consideration of this Agreement, and

WHEREAS, the parties hereto have reached this Agreement, through collective bargaining for the purpose of promoting harmony, safety, cooperation, efficiency, economy and quality of workmanship.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I

PRIOR AGREEMENTS

All prior Agreements entered into by and between the parties hereto, and all amendments to any such Agreements have heretofore been cancelled and terminated and such cancellation and termination is now recognized, ratified and confirmed by all parties signatory to this Agreement.

ARTICLE II
EFFECTIVE DATE

This Agreement shall become effective on the 1st day of May, A.D. 1968, which is the date of its execution by the Union and shall continue in full force and effect until the 30th day of April, A.D. 1971, which shall be the anniversary date. It shall continue thereafter from year to year unless terminated or modified in the manner hereinafter set forth.

ARTICLE III
TERRITORIAL JURISDICTION

The territorial area covered by this Agreement is hereby defined to be the Counties of Madison, Taylor, Hamilton, Suwannee, LaFayette, Dixie, Bradford, Levy, Gilchrist, Columbia, Baker, Union, Alachua, Nassau, Duval, Clay, St. Johns, Putnam, Marion, Citrus, Lake Sumter, and that portion of Flagler County on the Palatka side of a line midway between Daytona Beach and Palatka, in the State of Florida, and in the State of Georgia and the cities of Kingsland, St. Mary's and Folkston.

ARTICLE IV
NO LIMITATION ON OUTPUT

It is agreed that there shall be no limitation placed on the output of the individual workmen. There shall be no prohibition against the use of labor saving tools, machinery, equipment or devices; provided the same are in good operating condition and their use does not constitute a hazard to life, limb or health. If any question arises as to the condition of such tools, machinery, equipment or devices, the decision of any regularly employed safety engineer for any of the insurance companies authorized to do business in Florida shall be binding upon the parties signatory hereto.

ARTICLE V
DISPUTES

In the event of a dispute (other than jurisdictional) arising on the job, two (2) working days notice of such dispute will be given the employer before any action on the Union's part such as strikes, picket lines, work stoppages of any kind, shall be taken so there will be an opportunity to settle the dispute before presenting it to the Joint Grievance Committee as hereinafter specified.

There shall be a Joint Grievance Committee of six (6) consisting of three (3) authorized representatives of Management and three (3) authorized representatives of Labor. It is mandatory that this committee shall meet promptly upon request by any party hereto and providing there is no work stoppage shall decide all grievances and disputes arising under this Agreement. Should any member of the Committee be involved in the dispute or be unavailable a duly authorized alternate shall act for him. The decision of the Committee shall be final and binding on all parties. In the event the Committee is unable to reach a decision within two (2) weeks, it shall select a referee who decision shall be final. Such a referee shall be a resident of the State of Florida; he shall be selected and shall render a decision all within an additional period of two (2) weeks. It is not the intent or purpose of this Article V that the Grievance Committee shall negotiate any changes or modification of this Agreement, or handle any Jurisdictional disputes. All Jurisdictional disputes shall be referred to the National Joint Board for Jurisdictional Disputes.

ARTICLE VI
JURISDICTIONAL DISPUTES

There shall be no work stoppage, slowdown, work cessation

or strike because of a Jurisdictional Dispute. A mutually agreeable settlement, or joint decision of the International Unions involved, or decision or interpretation of the National Joint Board for the Settlement of Jurisdictional Disputes (or Hearing Panel) shall be binding and all parties agree to accept such decision or interpretation.

All parties agree that they are bound by the "Procedural Rules and Regulations of the National Joint Board for Settlement of Jurisdictional Disputes" and by the terms and provisions of the Agreement effective May 1, 1948, as amended, creating the Joint Board, and in particular the provision of the Agreement which states: "Any decision or interpretation by the Joint Board (or Hearing Panel) shall immediately be accepted and complied with by all parties signatory to this Agreement" and also in particular the provision which states: "When the Contractor has made a specific work assignment in accordance with the procedures herein established by the Joint Board."

ARTICLE VII
WORK ASSIGNMENTS

The parties signatory to this agreement shall abide by the following:

> Work assignments shall be made in accordance with area practice and decisions of the National Joint Board or as agreed to between the International Unions.

ARTICLE VIII
MODIFICATION

Any party desiring a modification of this Agreement shall give written notice, by registered mail, to the other parties hereto not less than ninety days prior to any anniversary date; provided that any party hereto by written notice, by registered

mail, to all other parties given not less than sixty (60) days prior to any anniversary date may terminate this Agreement. This Agreement may be modified or terminated on an anniversary date.

ARTICLE IX
VIOLATION OF LAW

It is not the intent or purpose of this Agreement to violate any State or Federal Statute, regulation or constitutional provision. Any provisions of this Agreement which are in violation of any National, State or Local or Governmental regulation affecting all or part of the territorial limits covered by this Agreement shall be suspended in operation within the territorial limits to which such law or regulation is applicable for the period during which such law or regulation is in effect. Such suspension shall not affect the operation of such provision in territories covered by the Agreement to which the law or regulation is not applicable, or shall it affect the operation of the remainder of the provisions of the Agreement within the territorial limit to which such law or regulation is applicable.

ARTICLE X
WAGES

Commencing the first full pay period following the effective date of this Agreement the hourly wages are as follows:

	1st Pay Period After 5/1/68	1st Pay Period After 11/1/68	1st Pay Period After 5/1/69	1st Pay Period After 11/1/69	1st Pay Period After 5/1/70	1st Pay Period After 11/1/70
Wages	$4.25	$4.35	$4.50	$4.57	$4.64	$4.64
Health & Welfare	.12	.12	.17	.17	.19	.19
Pension	.10	.15	.15	.15	.15	.15
Vacation	.05	.05	.10	.15	.15	.15
Apprentice Fund	.02	.02	.02	.02	.02	.02
Total	$4.54	$4.69	$4.94	$5.06	$5.15	$5.15

Foreman shall be paid 45¢ per hour above the applicable Journeyman's rate. General Foreman shall be paid 65¢ per hour above the applicable Journeyman's rate.

Certified welder shall be paid 25¢ above the Journeyman's scale only for the time that he is actually welding. Proof of certification will be given to the Contractor.

Union Members performing work with creosote lumber or other toxic material which is injurious to the health or skin shall be paid 25¢ above the Journeyman's rate.

Divers will be paid $50.00 per day.

APPRENTICES:

1st six months – 50% of Journeyman's scale
2nd six months – 55% of Journeyman's scale
3rd six months – 60% of Journeyman's scale
4th six months – 65% of Journeyman's scale
5th six months – 70% of Journeyman's scale
6th six months – 80% of Journeyman's scale
7th six months – 90% of Journeyman's scale
8th six months – 95% of Journeyman's scale

For all hazardous work there shall be paid a premium of 25¢ per hour while the craftsman is so engaged. For the purpose of this Section, hazardous work is defined to be:

1) Working on a scaffold or tower where the floor or ground level or place of excavation is 25 feet or more below.

2) While building is in framing stage, work within five (5) feet of edge of any building or uncovered shaft when same is twenty-five (25) feet above floor below or ground level or place of excavation. (Hazardous ex-

posure to cease in this area when guard rails are installed.)

3) Work in excavated pits (basement not included) cofferdams, etc., ten (10) feet or more below the ground or water level.

Travel expense will be allowed at the rate of one hours pay, at Journeyman's rate when the job is twenty (20) miles or more from the City Limits of any area where any Local exists. (The present city limits as platted May 1, 1968 shall apply for the duration of this Contract). Locals are located in Jacksonville, Live Oak, Gainesville, St. Augustine, Ocala and Palatka, Florida.

Carpenters starting to work on new job must bring their tools on job sharp and in condition to begin work, after which tools must be sharpened and kept in working condition on the Contractor's time.

Any Carpenter suffering an accident shall report same to the Foreman who shall make a written report of the accident to his employer. The employee shall not lose any time that day and management must furnish transportation to and from the doctor. In the event the employee is released for light work by the doctor, time lost going to the doctor must not be deducted from the employees pay.

ARTICLE XI
HOLIDAYS

It is agreed that the following shall be known as official holidays:

New Year's Day (January 1st)	Labor Day
Memorial Day (May 30th)	Thanksgiving Day
Independence Day (July 4th)	Christmas Day (December 25th)

Should any of such days fall on a Sunday, the Monday following shall be considered as the holiday. Should any of such days fall on a Saturday, the preceding Friday shall be considered as the holiday.

ARTICLE XII
HOURS

A work day shall consist of an eight (8) hour and thirty (30) minute period, with thirty (30) minutes out for lunch on the workman's own time, between the hours of 7:30 o'clock A.M. and 5:00 o'clock P.M. Monday through Friday inclusive. Permission will be granted by the Union, without overtime pay, to start work at 7:00 AM, if requested by the employer.

When two or more shifts are employed, seven (7) hours shall constitute a days work for the second and third shifts, for which the regular wage for eight (8) hours shall be paid, or a proportionate part thereof for time worked.

All work performed on Sunday and the hereinbefore designated Holidays, shall be paid double the effective hourly wage scale. All work exceeding eight (8) hours on any work days as well as work performed on Saturday, shall be paid time and one-half the effective hourly wage scale.

The Contractor shall allow the Carpenters employed on the job ten (10) minutes at the end of each day to pack their tools in tool chest. (Ten minutes to be on company time.)

ARTICLE XIII
OVERTIME

Any member being employed regularly shall not be permitted to work overtime for another employer, and where overtime is necessary, after the men working on the job have been placed, any additional men required must be taken from the ranks of the unemployed. In no case can a member work

for more than one employer in twenty-four hours unless he is laid off by his employer. In the event that the second shift is discontinued, eight hours must elapse before returning on the same job.

ARTICLE XIV
LAYOFFS

When a member is discharged or laid off he must be given not less than one hours notice of same in order that he may collect and sharpen his tools and he shall receive his pay in full on the job at such time, or waiting time must be charged until he does receive his pay in full.

If a member while in employment is laid off upon reporting to work in the morning he must be paid two hours time in addition to the amount previously due him. The men laid off must be put to work before other men are employed. When a member has been requested by the employer through his Business Representative, and is refused employment upon arriving at the job with his tools, he must be paid four (4) hours time provided he arrived at the time specified, or within one hour, if delay in reporting is unavoidable.

Any member reporting for work at start of shift, not being permitted to start work through no fault of his own shall be paid for two hours report time, if any work is performed, he shall receive four hours time.

ARTICLE XV
UNFIT WEATHER

The steward, jointly with the foreman, shall determine when the weather is fit for work, and if in their judgment the day is declared unfit, they shall notify all carpenters that they may leave the job. This must not apply to emergency work or members working under cover. If steward and foreman

cannot agree, subject will be taken by vote of members involved, majority to rule and all members affected must vote. Weather permitting employer may re-start the job by notifying the Business Agent so that he in turn may notify the steward and the members to return to work.

ARTICLE XVI
PAYDAY

Every employer must pay his carpenters before the end of a working shift on pay day each week in full lawful money of the United States, or by negotiable check through arrangements with the Union. If the Carpenters are not paid as herein specified the employer shall be charged waiting time at single time for the regular hours at end of shift and no work shall be done for said employer until the matter is adjusted.

ARTICLE XVII
APPRENTICESHIP

Employers signatory to this Agreement shall make contributions to the North Florida Carpenters' Joint Apprenticeship Committee Trust Fund based on .02¢ per hour, for each hour worked by the members of the United Brotherhood of Carpenters and Joiners of America, apprentices included, on a straight time basis. This shall not conflict with any State, Local or Federal Laws.

The ratio of apprentices, shall be one (1) for each two (2) journeymen and one (1) for each additional four (4) journeymen thereafter. Apprentices shall be used wherever possible.

ARTICLE XVIII
HEALTH AND WELFARE FUND

Employers signatory to this Agreement shall make contributions to the Carpenters District Council Health and Welfare

Fund based on each hour worked for the Contractors by members of the Union, apprentice hours included, straight time only, according to the schedule under ARTICLE X, WAGES. However, the carpenter superintendent, by individual choice, may elect not to be covered by this Welfare Trust Agreement, by written notice to the Union and his Employer.

A committee consisting of three (3) representatives appointed by the Union and three (3) representatives appointed by the Contractors shall continue to administer the Trust Fund.

ARTICLE XIX
PENSION TRUST AGREEMENT

Employers signatory to this Agreement shall make contributions to the Carpenters District Council of Jacksonville and Vicinity Pension Fund based on each hour worked for the Contractors by members of the Union, apprentice hours included, straight time only, according to the schedule under ARTICLE X, WAGES.

A committee consisting of three (3) representatives appointed by the Union and three (3) representatives appointed by the Contractor shall administer the Pension Fund.

ARTICLE XX
VACATION TRUST AGREEMENT

Employers signatory to this Agreement shall make contributions to the Carpenters District Council of Jacksonville and Vicinity Vacation Trust Fund which will administer and disburse the vacation funds to the members of the Union annually, in accordance with the conditions and procedures to be formulated by the Vacation Trust Committee. Contributions shall be made by the Contractor on each hour worked for the Contractor by members of the Union, appren-

tice hours included, straight time only, according to the schedule under ARTICLE X, WAGES.

A committee consisting of three (3) representatives appointed by the Union and three (3) representatives appointed by the Contractors shall set up the necessary rules and regulations, and administer this Fund.

ARTICLE XXI
HIRING PROCEDURES

There shall be no discrimination in the employment of carpenters on any job; regardless of age, sex, race, color, creed, or national origin.

ARTICLE XXII
AGE QUALIFICATIONS

One out of every five members employed shall be fifty-five years old or older, when available.

ARTICLE XXIII
STEWARDS

The Contractor recognizes the right of the Union to appoint shop stewards on all jobs being operated by the Contractors. The steward shall be a qualified Carpenter and the Contractor shall not discharge the steward for performing his duties as steward on the job. However, the Contractor is the sole judge of the Steward's capabilities and efficiency. The steward shall remain on the job all hours that carpenters work is being done, including overtime work. If job is shut down the steward shall be the first man re-employed. The steward shall be allowed sufficient time to perform his duties and shall not be discharged because of his activities in enforcing the Agreement as herein delineated. In the event it becomes necessary to discharge a steward the Contractor shall give the Business Agent two (2) working days notice prior

to the time the discharge is to take effect, in order that the Union may furnish a substitute steward. No steward shall be terminated without just cause. Just cause for termination shall include, but shall not be limited to, drinking on the job, fighting, not performing his duties as a workman, promoting disharmony on the job.

ARTICLE XXIV
FOREMAN

When there are three or more carpenters employed on any job, there shall be a Union Carpenter Foreman who shall give orders directly to the men. He in turn will receive his orders from the General Foreman or Superintendent. No foreman to be supervisor over more than fourteen (14) carpenters at any time. Any additional carpenters over fourteen shall require an additional foreman. Further, foremen with small crews, not to exceed four (4) men, are allowed to use their own tools. For jobs requiring two (2) foremen or more, there shall be a General Foreman. The Field Engineer shall not be used in lieu of a carpenter foreman.

ARTICLE XXV
RAIN GEAR

When the job steward deems it necessary and to the best interest of the members' health the Contractor must furnish rubber boots and raincoats or other rain gear. The Contractor must have sufficient boots and coats in the warehouse or tool room. The Contractor is required to sterilize the above mentioned equipment before interchanging between employees.

ARTICLE XXVI
TOILETS

Contractors must provide sanitary toilets at convenient locations, adjacent to where the majority of the men are work-

ing, and approved by the Board of Health on all projects of any duration.

ARTICLE XXVII
ICE WATER

All contractors or other persons employing carpenters must furnish ice water as the season may require, in suitable containers with faucets, also individual paper drinking cups.

ARTICLE XXVIII
SAW FILING

The employer must furnish all necessary files and special clamps for filing saws on the job. All saw filers shall be members of the United Brotherhood. There shall be no filing of saws, sharpening or grinding tools on the job other than during working hours.

ARTICLE XXIX
TOOL SHEDS OR BOXES

Contractor will be required to furnish ample weather proof tool sheds or boxes properly locked to be used exclusively by carpenters. Boxes to be in convenient location.

ARTICLE XXX
MOVING TOOLS

Any employer sending members from one job to another shall allow time to move tools to the next job, the same to be moved during working hours.

ARTICLE XXXI
PRE-FABRICATED MATERIALS

The employer agrees not to purchase pre-fabricated wood-framed walls, wooden forms or wooden tee jacks. This shall not prevent the employer from pre-fabricating these items off site, with his own forces or purchasing the above listed items from other parties which have an Agreement with this Union.

ARTICLE XXXII
TRADE AUTONOMY

The Trade Autonomy of the United Brotherhood of Carpenters and Joiners of America consist of the milling, fashioning, joining, assembling, erecting, fastening, dismantling of wood, hollow metal, fiber, plastics, glass, or any other material where tools, skill and knowledge of carpentry are required. The laying of all cork, carpets, resilient flooring, all cement asbestos boards, corrugated asbestos, and trancell, nucite, chalkboards, bulletin boards and material of similar composition, asphalt shingles and all plastic, acoustical and insulation material which is normally installed by carpenters and/or such new substitute material of similar manufacture, which may later be developed, the erecting and dismantling of wood working machinery, diving, (including divers' tenders), the manufacture of all wood materials where the skill, knowledge and training of a carpenter are required either through the operation of machines or hand tools.

This jurisdiction shall extend over the following divisions and sub-divisions of the trade: Carpenters and Joiners; carpenters on maintenance, ship carpenters, joiners and caulkers, shipwrights, bridge, dock and wharf carpenters, of driving all piles, floor layers, cabinet makers, bench hands, and all those engaged in the operation of wood working machinery, and all underpinning pertaining to the Carpenter's jurisdiction.

When the term "Carpenters and Joiners" is used, it shall mean all sub-divisions of the trade as herein specified.

All wood work on all bridges and construction work and all such work to be done by members of the United Brotherhood of Carpenters and Joiners of America is to be in accordance with the following specifications; the making and setting of all concrete forms, making forms, the erection of all precast

concrete beams, tees, and exterior concrete wall slabs in accordance with area practice which uses a composite crew for such erection and the rigging of all material covered by this Agreement; the making of molds for concrete or other building blocks when same are of wood or other fibrous materials; the assembling and erecting of all metal forms when used in place of wood; the installing of all metal pans used as concrete forms. The removal of forms shall be in accordance with the International Agreement between the Carpenters and the Laborers.

The building of scaffolds, tresles, ladders, derricks, hoists, travelers, pile drivers and other appliances, made wholly of or in part of wood, which are used in construction work. All welding and burning pertaining to pile drivers must be done by pile drivers. The preparing, fitting and construction of all framing, when same is of wood or other like material, shingles, etc.; the making and putting on of all grounds for plaster, including wood casing beads where casing beads trim out windows and door openings; the cutting off and capping of all piling.

The staying and setting of all frames, wood or metal, sashes, doors, hollow metal or wood; metal trim, venetian blinds, casework, fixtures and all other materials manufactured in planing mills, cabinet shops and all other wood working factories, plumbing, leveling and bracing of all hollow metal door frames, where same are set in unfinished walls and plumbed, leveled; stayed or braced; the making and assembling, erecting and installing of all fixture, opera chairs, seats, benches and all other furniture but the unloading of such material shall also be the work of the carpenter unless such material is delivered in cartons. Also, all handling and cutting and placing of all roof board such as sheet rock, U.S.

Gypsum board, celotex, masonite, porex, whether flat or concave or other similar material. Also, cemesto-board whether on wall or ceiling. Further, the installation of acoustical materials, metal partitions, and metal fixtures and furniture, excluding metal toilet partitions. Further, the installation of all overhead doors, tracks, and guides, including whether it be wood or metal.

All other decisions to be rendered by the Building and Construction Trades Department of the American Federation of Labor. All burning and welding pertaining to the work assigned jurisdictionally to the Brotherhood of Carpenters shall be done by members of the Brotherhood. Also, the installation of weather stripping on all openings. Making of all templates and setting of all anchor bolts belongs to the Carpenters. The making of all eye bolts and form bolts and threading of same used in connection with form and scaffolding building. Also, installing metal thresholds and metal door strips. This Article shall not take precedence over other Articles of this Agreement.

THIS AGREEMENT WAS NEGOTIATED BETWEEN THE LABOR RELATIONS COMMITTEE OF THE NORTHEASTERN FLORIDA CHAPTER OF THE ASSOCIATED GENERAL CONTRACTORS AND THE UNION SIGNATORY HERETO.

THIS AGREEMENT IS BINDING ONLY TO THOSE INDIVIDUALS, FIRMS AND CORPORATIONS AND THE UNION WHO ARE SIGNATORY HERETO.

CHAIRMAN,
LABOR RELATIONS COMMITTEE

/s/ DANA B. KENYON

(Signatures of contractors, including

William E. Arnold Co.
BY: /s/ W. E. Arnold, Jr., President)

Signed, Sealed and Delivered
in the presence of:
/s/ Clay Mort
Clay Mort

Signed, Sealed and Delivered
John H. Sea
Earl S. Huff

FOR THE UNION:
A. A. Howell
L. D. Underwood, Jr.

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA.

Division - B

ORDER

Case No. 71-3623

(Filed April 23, 1971)

WILLIAM E. ARNOLD COMPANY, a Florida corporation,

Plaintiff,

v.

CARPENTERS DISTRICT COUNCIL OF JACKSONVILLE AND VICINITY, a labor organization, and as an unincorporated association, by and through JOHN H. SEA, business representative thereof; and CARPENTERS LOCAL UNION NO. 627, a labor organization, and as an unincorporated association, by and through EARL S. HUFF, assistant business representative thereof,

Defendants.

ORDER

THIS CAUSE coming on to be heard on Plaintiff's sworn bill of Complaint and upon its application for a Temporary Restraining Order, and after telephoned notice a hearing having been held at which the defendants' attorney was present and sworn testimony and other evidence was received, and it appearing that the injuries apprehended will be done if

an immediate remedy is not afforded, and that, therefore, Plaintiff is entitled to a Temporary Restraining Order herein, it is therefore,

ORDERED, that pending further order of this Court herein:

The Defendants, and each of them and their officers, agents, members, servants, employees, attorneys, and representatives, and those persons in active concert or participation with them, and all persons having knowledge of the Court's Order, be immediately restrained and enjoined from:

(a) Causing, inducing, participating in or aiding any refusal to work for Plaintiff at the Jacksonville General Hospital, 4901 Richard Street, Jacksonville, Florida, in violation of Article VI of the collective bargaining Agreement between the parties dated May 1, 1968.

(b) Committing, doing, or uttering any act, word or deed, written, spoken or performed, singularly or in concert, which is intended, designed or calculated, to induce, persuade, order, cause or bring about any breach of Article VI of the aforesaid collective bargaining Agreement between Defendant Unions and Plaintiff, or which is intended, designed or calculated to induce, persuade, order, cause or bring about any work stoppage by or on the part of any person in violation of Article VI of the aforesaid Agreement.

(c) Taking any other action whatsoever for the purpose of causing any such breach of contract or work stoppages in violation of Article VI of said Agreement.

This Temporary Restraining Order shall become of full force and effect upon the Plaintiff giving bond as required by law in the sum of $5,000.00, and approved by the Court

or its Clerk and upon the giving and approving of said bond, such approval to be endorsed hereon.

ORDERED IN Jacksonville, Duval County, Florida, this 23rd day of April, 1971.

/s/ ROGER J. WAYBRIGHT
Judge

NORTHEASTERN FLORIDA CHAPTER

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

COPY

Chairman,
National Joint Board
815 - 16th Street, N. W.
Washington, D. C.

May 11, 1966

Dear Sir:

For the information of the National Joint Board, and in order to promote and maintain harmonious labor conditions in the area, we wish to advise the National Joint Board that the prevailing area practice for Dry Gypsum Work in our area is as follows:

1) The installation of the 1-1/2" channels or other similar carrying members and the inserts and/or hangers for supporting such channels or carrying members, and the cross furring channels for suspended dry gypsum ceilings is the work of the Lathers. The attachment of the dry gypsum material to the cross furring channels is the work of the Carpenters.

2) The installation of metal studs, and the floor and ceiling channels to receive the metal studs, shall be the work of the Carpenters where such studs are to receive dry gypsum walls. The installation of metal studs, and the floor and ceiling channels to receive the metal studs, shall be the work of the Lathers, where such studs are to receive metal lath, rock lath, etc., which serves as a base for plaster or stucco.

After thorough investigation, we realize that there have been certain minor exceptions to the above, in the past, but we believe that the definition of *prevailing area practice*, as described, is a fair and correct evaluation of work of this nature which has been performed in our area.

Sincerely,

/s/ Clay Mort
Clay Mort,
Executive Manager

CM/r
cc: All Plastering & Drywall Contractors
Lathers' Union
Carpenters Union

Filed in Evidence
Case No. 71-3823
Defendant's Exhibit No. 1
April 23, 1971
Roger J. Waybright
Circuit Judge

INJUNCTION BOND
(Filed April 23, 1971)

KNOW ALL MEN BY THESE PRESENTS: That William E. Arnold Company as principal and Transamerica Insurance Company, are held firmly bound unto the Defendants in the sum of $5,000.00 to payment of which they bind themselves, jointly and severally, each for himself, his heirs, legal representatives and assigns, firmly by these presents.

Sealed with their seals and dated this 22nd day of April, 1971.

The condition of the above obligations is such that whereas the Plaintiff has filed in the Circuit Court in and for Duval County, Florida Complaint for Injunction against the above Defendants, and upon this day of April, 1971, has obtained a Temporary Injunction from said Court restraining and enjoining the Defendants from certain acts, now, if the Plaintiff shall abide the decision of said Court and pay such costs for damages as may be incurred and suffered by the Defendants in the event Defendants shall be found to have been injured by the wrongful entry of said Temporary Injunction, then these presents shall be void, otherwise to remain in full force and effect.

WILLIAM E. ARNOLD COMPANY
/s/ William E. Arnold, Jr. (SEAL)
As Principal President

TRANSAMERICA INSURANCE CO.
Harvard F. Eubanks (SEAL)
Attorney-in-Fact
As Surety

Approved:
S. MORGAN SLAUGHTER,
CLERK OF THE CIRCUIT COURT
By Dorothy Wood
Deputy Clerk

FORM

TRANSAMERICA INSURANCE COMPANY

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

That TRANSAMERICA INSURANCE COMPANY, a corporation of the State of California does hereby make, constitute and appoint

CECIL W. POWELL, HARVARD F. EUBANKS, JOHN A. MIDDLETON and GEORGE O. MIDDLETON,
——— of JACKSONVILLE, FLORIDA ———
——each——

its true and lawful Attorney(s)-in-Fact, with full power and authority, for and on behalf of the Company as surety, to execute and deliver and affix the seal of the Company thereto, if a seal is required, bonds, undertakings, recognizances or other written obligations in the nature thereof, as follows:

> Any and all bonds and undertakings not exceeding in amount ONE MILLION AND NO/100 ($1,000,000.00) DOLLARS, in any single instance, for or on behalf of this Company, in its business and in accordance with its charter,

and to bind TRANSAMERICA INSURANCE COMPANY thereby, and all of the acts of said Attorney(s)-in-Fact, pursuant to these presents, are hereby ratified and confirmed. This appointment is made under and by authority of the following by-laws of the Company which by-laws are now in full force and effect:

ARTICLE VII

SECTION 30. All policies, bonds, undertakings, certifi-

cates of insurance, cover notes, recognizances, contracts of indemnity, endorsements, stipulations, waivers, consents of sureties, re-insurance acceptances or agreements, surety and co-surety obligations and agreements, underwriting undertakings, and all other instruments pertaining to the insurance business of the Corporation, shall be validly executed when signed on behalf of the Corporation by the President, any Vice President or by any other officer, employee, agent or Attorney-in-Fact authorized to so sign by (i) the Board of Directors, (ii) the President, (iii) any Vice President, or (iv) any other person empowered by the Board of Directors, the President or any Vice President to give such authorization; provided that all policies of insurance shall also bear the signature of a Secretary, which may be a facsimile, and unless manually signed by the President or a Vice President, a facsimile signature of the President. A facsimile signature of a former officer shall be of the same validity as that of an existing officer.

The affixing of the corporate seal shall not be necessary to the valid execution of any instrument, but any person authorized to execute or attest such instrument may affix the Corporation's seal thereto.

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of the Company at a meeting duly called and held on the 17th day of October 1963.

> "Resolved, That the signature of any officer authorized by the By-laws and the Company seal may be affixed by facsimile to any power of attorney or special power of attorney or certification of either given for the execution of any bond undertaking, recognizance or other written obligation in the nature thereof; such signature and

seal, when so used being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed."

IN WITNESS WHEREOF, TRANSAMERICA INSURANCE COMPANY has caused these presents to be signed by its proper officer and its corporate seal to be hereunto affixed this 22nd day of February 1967.

TRANSAMERICA INSURANCE COMPANY

By /s/ T. M. Gregory,
Vice President

State of California)
ss
County of Los Angeles)

On this 22nd day of February, 1967, before me personally came T. M. Gregory to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Pasadena, State of California that he is a Vice-President of Transamerica Insurance Company, the Corporation described in and which executed the above instrument; that he knows the seal of said Corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

/s/ E. Church
E. CHURCH, Notary Public
My Commission Expires July 17, 1970

I, J. B. Crawford, Assistant Secretary of Transamerica Insurance Company, do hereby certify that the Power of Attorney herein before set forth is a true and exact copy and is still in force, and further certify that Section 30 of Article VII of the By-Laws of the Company and the Resolution of the Board of Directors, set forth in said Power of Attorney are still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said Company this 22nd day of April, 1971.

/s/ J. B. Crawford

J. B. Crawford, Assistant Secretary

IN THE SUPREME COURT OF FLORIDA

Case No. 41,199

CARPENTERS DISTRICT COUNCIL OF JACKSONVILLE AND VICINITY, a labor organization, and as an unincorporated association, by and through JOHN H. SEA, business representative thereof; and CARPENTERS LOCAL UNION NO. 627, a labor organization, and as an unincorporated association, by and through EARL S. HUFF, assistant business representative thereof,

Petitioners,

vs.

THE HONORABLE ROGER J. WAYBRIGHT, as Circuit Judge of the Fourth Judicial Circuit, in and for Duval County, Florida,

Respondent.

PETITION FOR REHEARING

COMES NOW William E. Arnold Company, by and through its undersigned attorneys, and hereby petitions the Court for rehearing pursuant to Rule 3.14, Florida Appellate Rules, on the following grounds:

The Opinion of the Court was rendered on April 18, 1973. In its Opinion, the Court held that a strike which is a contract breach, and also arguably an unfair labor practice, cannot be enjoined by the State courts. In so holding, the Court concluded that the National Labor Relations Board was vested with exclusive jurisdiction. By concluding that the NLRB has *exclusive* jurisdiction in cases such as this, the Court apparently overlooked or failed to consider the following:

(a) In its Opinion, at page 3, the Court, in the case *sub*

judice, stated that "* * * The decisive issue is whether or not the activity enjoined is arguably an unfair labor practice, not whether it is also a breach of contract." This same conclusion was originally adopted by the Supreme Court of Michigan in a breach of collective bargaining contract suit initially brought in state court in the case of *Smith v. Evening News Association*, 106 N.W.2d 785 (Mich. Sup. Ct. 1961), *rev'd* in 371 U.S. 195 (1962). The decision of the Supreme Court of Michigan was subsequently reversed by the United States Supreme Court, which expressly held:

> "In Lucas Flour as well as in Atkinson, the Court expressly refused to apply the pre-emption doctrine of the Garmon case; and *we likewise reject that doctrine here where the alleged conduct of the employer, not only arguably, but concededly, is an unfair labor practice within the jurisdiction of the National Labor Relations Board. The authority of the Board to deal with an unfair labor practice which also violates a collective bargaining contract is not displaced by §301, but it is not exclusive and does not destroy the jurisdiction of the courts [state and federal] in suits under Section 301.*" (Emphasis added.) 371 U.S. 195.

(b) The Court apparently misconstrued and overlooked the rationale underlying the decision rendered in *Radio Corporation of America v. Local 780*, 160 So.2d 150 (2nd DCA Fla. 1964) as is indicated by the Court's Opinion at page 3 which states that "***in Radio Corporation of America v. Local 780, International Alliance of Theatrical Employees, AFL-CIO, 160 So.2d 150 (Fla. App. 2d 1964), *cert. denied*, 169 So.2d 390 (Fla. 1964); *cert. denied*, 380 U.S. 973 (1965), relied

upon by the District Court, there was no allegation that the strike enjoined constituted an unfair labor practice as well as a breach of contract." In the *RCA* case, *supra*, the unions which had been enjoined from violating the no-strike agreements between the parties did in fact raise the claim that their activities were either arguably protected and/or prohibited by the National Labor Relations Act, and that, therefore State court jurisdiction had been federally pre-empted by the National Labor Relations Board, 160 So.2d at 152-154. This claim of pre-emption was rejected by the Second District Court of Appeal which specifically relied upon the United States Supreme Court's decisions rendered in *Smith v. Evening News Association, supra*, and *Charles Dowd Box Company v. Courtney*, 368 U.S. 502 (1962).

(c) In reaching the conclusion that "***in cases such as this one, where the National Labor Relations Board has exclusive jurisdiction because of the unfair labor practice involved ***" (see page 3 of Opinion), the Court apparently overlooked the case of *Collyer Insulated Wire*, 192 NLRB No. 150 (1971). In *Collyer, supra*, the Board, relying in part on *Smith v. Evening News Association, supra*, recognized that its jurisdiction over unfair labor practices was concurrent with that of the courts where the unfair labor practice was also a breach of contract. The Board pointed out that this concept of *concurrent* rather than exclusive jurisdiction was consistent with the national labor policy whereby the preferred method for settling disputes is by the method agreed upon by the parties in their collective bargaining agreements. 29 U.S.C. §173(d).

For the foregoing reasons, William E. Arnold Company

respectfully moves that the Petition for Rehearing be granted, that the Court's Opinion dated April 18, 1973, be vacated and that the Petition for Writ of Certiorari be dismissed and discharged.

Respectfully submitted,

COFFMAN & JONES
Post Office Box 40089
Jacksonville, Florida 32203

By /s/ Daniel R. Coffman, Jr.

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a copy of the foregoing Petition for Rehearing has been furnished this 1st day of May, 1973, by United States first class mail to Lacy Mahon, Jr., Esquire, Mahon & Mahon, 77 Washington Street, Jacksonville, Florida 32202, and The Honorable Roger J. Waybright, Fourth Judicial Circuit, Duval County Courthouse, Duval County, Florida.

/s/ Daniel R. Coffman, Jr.
Attorney

IN THE SUPREME COURT OF
THE STATE OF FLORIDA

..... TERM, 1971

CARPENTERS DISTRICT COUNCIL OF JACKSONVILLE AND VICINITY, a labor organization, and as an unincorporated association, by and through JOHN H. SEA, business representative thereof; and CARPENTERS LOCAL UNION NO. 627, a labor organization, and as an unincorporated association, by and through EARL S. HUFF, assistant business representative thereof,

Petitioners,

vs.

THE HONORABLE ROGER J. WAYBRIGHT, as Circuit Judge of the Fourth Judicial Circuit, in and for Duval County, Florida,

Respondent.

PETITIONER'S REPLY TO
RESPONDENT'S PETITION FOR REHEARING

MAHON & MAHON
77 Washington Street
Jacksonville, Florida 32202
Attorneys for Petitioners

PETITIONER'S REPLY TO
RESPONDENT'S PETITION FOR REHEARING

Petitioner would submit that Respondent's Petition for Rehearing should be stricken or denied.

Rule 3.14(b), Florida Appellate Rules, provides as follows:

"Contents of Petition. The petition for rehearing shall

> not assume a new ground or position from that taken in the original argument or briefs upon which the cause was submitted, and must set forth concisely, *and without argument*, the alleged omissions, oversights, causes, or grounds on which it is based." (emphasis added)

And, in Section (d) of the aforesaid rule, is provided:

> "Rule Violation. In case of a substantial violation of any material provision of this rule, the petition will be stricken by the Court on its own motion and the contents will not be considered."

These particular provisions have been construed very strongly by the Courts of our state for many years. See Authors' Comment, Florida Statutes Annotated, Appellate Rules, Rule 3.14. This Court itself has in numerous cases applied these rules to petitions for rehearing, and stated in *Payne v. Ivey*, 93 So 143 (Fla. Sup. Ct. 1922) at page 148:

> "The proper function of a petition for rehearing is to present to the Court in clear, concise terms some material point that the Court overlooked or failed to consider, only this and nothing more.
>
> "This Court has held also that the following are violations of the rule that will cause dismissal of the application for rehearing, viz.: (1) To accompany the petition with, or to include therein, a written argument and citation of authorities; (2) joining issue with the Court in such application, as to the correctness of its conclusions upon points involved in its decision that were expressly considered and passed upon; and (3) an application for rehearing that re-argues the cause in advance of a permit from the Court for such rehearing."

And, more recently, this Court held in *Diamond Cab Co. of Miami v. King*, 146 So2d 889 (Fla.Sup.Ct. 1962) on page 891, the following:

> "The purpose of a petition for rehearing is merely to bring to the attention of the trial court, or in this instance, the administrative agency, some point which it overlooked or failed to consider when it rendered its order in the first instance. (citing cases) It is not intended as a procedure for re-arguing the whole case merely because the losing party disagrees with the judgment or the order."

In the case at bar, petitioner would submit that with all due respect, the petition for rehearing filed by the respondent violates all of these prohibitions. Respondent has turned its petition for rehearing into a small brief re-arguing its position, similar to the numerous amicus curiae briefs filed in the cause.

For these reasons, petitioner would submit the petition for rehearing should be stricken.

Furthermore, it is apparent that both the petition for rehearing and the various amicus curiae briefs filed in this cause merely present re-argument on cases relied on in the jurisdictional and main brief filed by respondent, and argued by respondent to this Court orally.

The main concern of the respondent seems to be that of *Smith v. Evening News Association*, 371 U.S. 195 (1962). This case has been argued to the Court in both briefs previously filed by the respondent. It was decided *eight* years prior to this Court's decision in *Sheetmetal Workers International Association v. Florida Heat and Power*, 230 So2d 154.

The case is distinguishable from the case at bar in several respects. It was a suit for damages brought under §301 of the Taft-Hartley Act, and no question of injunctive relief even entered the suit. This is an extremely important distinction in view of the anti-injunctive language of the Norris - La Guardia Act, severely restricting Federal Courts' power to enjoin in labor disputes. It is submitted that *Smith v. Evening News* was considered carefully by this Court, and its meaning was not misconstrued.

Another point raised by respondent, which had also been raised and argued previously, was that this court overlooked the rationale of *Radio Corporation of America v. Local 780*, 160 So2d 150 (2nd DCA, 1964) decided six years prior to *Sheetmetal* supra. This is just not so, because this Court is correct in its observation that there was no allegation of unfair labor practice in that case. Furthermore, it does not appear that that case involved an unfair labor practice.

Petitioner would submit that this Court correctly decided *Scherer and Sons, Inc. v. International Ladies Garment Workers Union Local 415*, 142 So2d 290, *Sheetmetal*, supra, and the case at bar. The petition for rehearing should be dismissed.

Respectfully submitted,

MAHON & MAHON

By /s/ Lacy Mahon, Jr.
Lacy Mahon, Jr.
77 Washington Street
Jacksonville, Florida 32202
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a copy of the foregoing Petitioner's Reply to Respondent's Petition for Rehearing has been furnished to COFFMAN & JONES, Esquires, Attorneys for William E. Arnold Company, 1061 Riverside Avenue, Jacksonville, Florida 32204, by US Mail, this 18th day of May, A.D. 1973.

MAHON & MAHON

By /s/ Lacy Mahon, Jr.
Lacy Mahon, Jr.
77 Washington Street
Jacksonville, Florida 32202
Attorneys for Petitioner